

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 IN RE: Bard Implanted Port Catheter
10 Products Liability Litigation

MDL No. 3081

11 **CASE MANAGEMENT ORDER NO. 29**

12 **DISCOVERY PROTOCOLS FOR**
13 **DISCOVERY GROUP 1**

14 Pursuant to Case Management Order (“CMO”) No. 10, as amended (Docs. 115,
15 2128), the Court enters this CMO regarding the discovery to be conducted for cases in
16 Discovery Group 1.

17 **I. DEPOSITION PROTOCOLS GENERALLY**

- 18 A. Amended CMO No. 10 shall apply to Discovery Group 1.
19 B. The additional protocols of this CMO shall also apply to Discovery Group 1.
20 C. Pursuant to Amended CMO No. 10, Section V.A, the Parties will provide
21 discovery protocols applicable to Bellwether Group 1 by no later than **April 7,**
22 **2025.**

23 **II. DEPOSITIONS PERMITTED**

- 24 A. Prior to **April 4, 2025**, the Parties may take the following depositions in each
25 case that is part of Discovery Group 1:
26 1. The principal Plaintiff and any loss-of-consortium plaintiff;
27 2. The spouse or a significant family member of the Plaintiff if there is no
28 loss-of-consortium plaintiff;

3. The implanting physician for each port implanted in Plaintiff at issue in the lawsuit;
4. The explanting physician for each port explanted from Plaintiff at issue in the lawsuit;
5. The diagnosing physician, if different from the implanting or explanting physician;
6. As reasonable, one additional treating physician as selected by Plaintiffs;
7. As reasonable, one additional treating physician as selected by Defendants; and
8. No more than one sales representative and/or supervisor as selected by Plaintiffs.

B. Examination of treating physicians.

1. By no later than **January 14, 2025**, Plaintiffs shall identify the physicians whom they have a good faith belief they would call as witnesses in their case in chief for each of the Discovery Group 1 cases. By no later than **January 21, 2025**, Defendants shall identify any physician not identified by Plaintiffs whom they have a good faith belief they would call in their case in chief for each of the Discovery Group 1 cases.
2. For any physician deposed in Discovery Group 1:
 - a. Plaintiffs' counsel shall be the first examiner for any physician Plaintiffs have identified by January 14, 2025 as a witness they would call in their case in chief; and
 - b. Defendants' counsel shall be the first examiner for any physician Defendants have identified by January 21, 2025 as a witness they would call in their case in chief.

c. The deposition shall be limited to seven hours, as permitted by Fed. R. Civ. P. 30(d)(1), with Plaintiff and Defendants entitled to equal time.

C. Nothing in this Order is intended to limit additional fact discovery in cases selected for inclusion in Bellwether Group 1.

D. All depositions taken pursuant to this protocol shall presumptively be conducted remotely, but the parties shall have a right to attend in person. If counsel for any party intends to attend a deposition in person, they must notify counsel for all parties fourteen (14) days prior to the scheduled deposition or at the time of noticing.

III. PROTOCOLS RELATING TO TREATING PHYSICIANS

A. *Ex Parte* Communications with Treating Physicians

1. Defendants are prohibited from communicating *ex parte* with Plaintiffs' treating physicians, except that staff members and paralegals of the law firms representing Defendants may contact the physicians' offices for the sole purpose of scheduling those depositions in which they are the first examiner, pursuant to paragraph B.2.b., above or where the parties agree that Defendants may contact the physicians' offices for the purpose of scheduling.

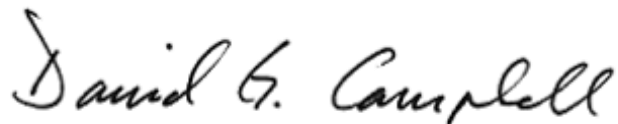
2. Plaintiffs' counsel may communicate *ex parte* with treating physicians.

B. Disclosure of Documents Prior to Depositions of Treating Physicians

1. If Plaintiffs' counsel has communicated *ex parte* with a treating physician who will be deposed, Plaintiffs' counsel shall identify by production bates number (or by providing a copy if no such bates numbers exist) to opposing counsel all documents provided, shown, read from, or otherwise specifically described to the witness, other than the physician's records of treatment, at least five (5) days prior to the deposition.

2. For *ex parte* meetings with a physician that take place less than five (5) days prior to the deposition:
 - a. at least 24 hours prior to the meeting, Plaintiffs' counsel shall identify by production bates number (or by providing a copy if no such bates numbers exist) to opposing counsel all documents they intend to provide, show, read from, or otherwise specifically describe to the witness, other than the physician's records of treatment;
 - b. as soon as practicable after the meeting, Plaintiffs' counsel shall disclose to opposing counsel all documents that were actually provided, shown, read from, or otherwise specifically described to the witness, other than the physician's records of treatment.
3. At least five (5) days prior to a physician deposition, all examining counsel shall provide to opposing counsel and deponent's counsel copies of documents that may be shown to the witness during the deposition or about which counsel expects to examine a deponent, other than the physician's records of treatment. The obligations of this section include the good faith representations of counsel to identify only those documents actually intended to be utilized during the deposition, not to exceed 40 in number.

Dated this 3rd day of January, 2025.



David G. Campbell
Senior United States District Judge